Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR95-1508

Dear Ms. Cory:

The Texas Workers' Compensation Commission (the "commission") received a request from an employee for information concerning the commission's internal investigation concerning the employee's use of a rental car. You have asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36012.

You assert that the information at issue is made confidential under an amendment to the Labor Code passed by the 74th Legislature. This new provision states:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

(1) in a criminal proceeding;

(2) in a hearing conducted by the commission;

(3) on a judicial determination of good cause; or

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

(b) Commission investigation files are not open records for purposes of chapter 552, Government Code.

(c) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

(1) the complaint was groundless or made in bad faith; or

(2) the complaint lacks in basis in fact or evidence; or

(3) the complaint is frivolous; or

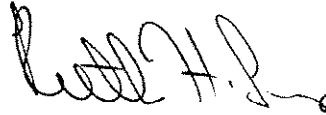(4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Act of June 16, 1995, 74th Leg., R.S., ch. 980, § 1.19, 1995 Sess. Law Serv. 4916 (Vernon) (to be codified at Tex. Labor Code § 402.092, effective September 1, 1995) (referred to hereafter as section 402.092).

We have reviewed the internal personnel file at issue, which includes both information specifically about the employee and records from commission cases worked on by the employee. We are unable to determine whether section 402.092, cited above, is applicable to the records of commission cases worked on by the employee. The statute makes confidential the commission's investigation files concerning compliance with Texas worker's compensation laws. However, the commission's own review of an employee's compliance with internal policies regarding the use of a rental car is not an investigation into worker's compensation laws. Thus, section 552.092 does not make confidential these other internal records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.:   ID# 36012

Enclosures: Submitted documents

cc: Mr. David P. Holmes
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       Workers' Compensation Commission
       Houston East Office
       7151 Office City Drive, Suite 101
       Houston, Texas 77087
       (w/o enclosures)